

AMENDED IN SENATE JUNE 26, 2001  
AMENDED IN ASSEMBLY MARCH 29, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 947**

**Introduced by Assembly Member Jackson**

February 23, 2001

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An act to amend Section 35294.2 of the Education Code, to amend Section 12999.5 of, and to add Section 11503.5 to, the Food and Agricultural Code, ~~and to amend Section 54985 of the Government Code,~~ relating to pesticides.

LEGISLATIVE COUNSEL'S DIGEST

AB 947, as amended, Jackson. Pesticides: schoolsites.

(1) Existing law authorizes the levy of civil penalties of not more than \$1,000 for each violation of any provision of a specified body of law relating to pesticides.

This bill would increase this penalty to not more than \$5,000 for each violation *determined to be a serious violation. This bill would also authorize a county agricultural commissioner to charge a fee for monitoring subsequent pesticide applications made within 1/4 mile of a school by a person who has received a civil penalty for a specified violation of law relating to pesticides.*

(2) Under existing law, the agricultural commissioner of any county may adopt regulations applicable in his or her county that are supplemental to those of the Secretary of Food and Agriculture that govern the conduct of pest control operations and records and reports of those operations.

~~This bill would authorize the commissioner of any county to regulate pesticide applications around sensitive sites, as defined, specifically schoolsites condition the agricultural use of any pesticide within 1/4 mile of a school, as specified.~~

(3) Existing law provides that each school district and county office of education is responsible for the overall development of comprehensive school safety plans for its schools.

~~This bill would require that for every school located within one quarter mile of agricultural land under production the plan shall include an element that specifically addresses the public health and safety considerations related to pesticide drift and potential exposure to pesticides the school safety plan include procedures for responding to the release of a pesticide or other toxic substance from properties within 1/4 mile of a school.~~ By imposing additional duties on local entities, the bill would establish a state-mandated local program.

(4) ~~Under existing law, notwithstanding any other provision of law that prescribes or limits the amount of a fee or charge which may be levied by a county, a county service area, or a county waterworks district governed by a county board of supervisors, the county board of supervisors is authorized, after giving notice and conducting a public hearing, to increase or decrease any fee or charge by ordinance, if the fee or charge is prescribed or otherwise limited by an existing provision of law, in the amount reasonably necessary to recover the cost of providing any product or service or the cost of enforcing any regulation for which the fee or charge is levied. Existing law prescribes certain exceptions to this provision, including specified fees charged or collected by a county agricultural commissioner.~~

~~This bill would delete from these exceptions any fee charged or collected by a county agricultural commissioner.~~

(5) ~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 35294.2 of the Education Code is  
2 amended to read:  
3 35294.2. (a) The comprehensive school safety plan shall  
4 include, but not necessarily be limited to, the following:  
5 (1) Assessing the current status of school crime committed on  
6 school campuses and at school-related functions.  
7 (2) Identifying appropriate strategies and programs that will  
8 provide or maintain a high level of school safety and address the  
9 school's procedures for complying with existing laws related to  
10 school safety, which shall include the development of all of the  
11 following:  
12 (A) Child abuse reporting procedures consistent with Article  
13 2.5 (commencing with Section 11164) of Title 1 of Part 4 of the  
14 Penal Code.  
15 (B) Disaster procedures, routine and emergency *including*  
16 *provisions for responding to the release of a pesticide or other toxic*  
17 *substance from properties located within one-quarter mile of a*  
18 *school.*  
19 (C) Policies pursuant to subdivision (d) of Section 48915 for  
20 pupils who committed an act listed in subdivision (c) of Section  
21 48915 and other school-designated serious acts which would lead  
22 to suspension, expulsion, or mandatory expulsion  
23 recommendations pursuant to Article 1 (commencing with  
24 Section 48900) of Chapter 6 of Part 27.  
25 (D) Procedures to notify teachers of dangerous pupils pursuant  
26 to Section 49079.  
27 (E) A sexual harassment policy, pursuant to subdivision (b) of  
28 Section 231.5.  
29 (F) The provisions of any schoolwide dress code, pursuant to  
30 Section 35183, that prohibits pupils from wearing "gang-related  
31 apparel," if the school has adopted such a dress code. For those  
32 purposes, the comprehensive school safety plan shall define  
33 "gang-related apparel." The definition shall be limited to apparel  
34 that, if worn or displayed on a school campus, reasonably could be  
35 determined to threaten the health and safety of the school

1 environment. Any schoolwide dress code established pursuant to  
2 this section and Section 35183 shall be enforced on the school  
3 campus and at any school-sponsored activity by the principal of  
4 the school or the person designated by the principal. For the  
5 purposes of this paragraph, “gang-related apparel” shall not be  
6 considered a protected form of speech pursuant to Section 48950.

7 (G) Procedures for safe ingress and egress of pupils, parents,  
8 and school employees to and from school.

9 (H) A safe and orderly environment conducive to learning at  
10 the school.

11 (I) The rules and procedures on school discipline adopted  
12 pursuant to Sections 35291 and 35291.5.

13 (b) It is the intent of the Legislature that schools develop  
14 comprehensive school safety plans using existing resources,  
15 including the materials and services of the School Safety  
16 Partnership, pursuant to Chapter 2.5 (commencing with Section  
17 32260) of Part 19. It is also the intent of the Legislature that schools  
18 use the handbook developed and distributed by the School/Law  
19 Enforcement Partnership Program entitled “Safe Schools: A  
20 Planning Guide for Action” in conjunction with developing their  
21 plan for school safety.

22 (c) Grants to assist schools in implementing their  
23 comprehensive school safety plan shall be made available through  
24 the School Safety Partnership as authorized by Section 32262.

25 (d) Each schoolsite council or school safety planning  
26 committee in developing and updating a comprehensive school  
27 safety plan shall, where practical, consult, cooperate, and  
28 coordinate with other schoolsite councils or school safety planning  
29 committees.

30 (e) The comprehensive school safety plan shall be evaluated  
31 and amended, as needed, by the school safety planning committee  
32 no less than once a year to ensure that the comprehensive school  
33 safety plan is properly implemented. An updated file of all  
34 safety-related plans and materials shall be readily available for  
35 inspection by the public.

36 (f) The comprehensive school safety plan, as written and  
37 updated by the schoolsite council or school safety planning  
38 committee, shall be submitted for approval under subdivision (a)  
39 of Section 35294.8.

1 ~~(g) The comprehensive school safety plan shall include an~~  
2 ~~element that specifically addresses the public health and safety~~  
3 ~~considerations related to pesticide drift and potential exposure to~~  
4 ~~pesticides for every school located within one quarter mile of~~  
5 ~~agricultural land under production.~~

6 SEC. 2. Section 11503.5 is added to the Food and Agricultural  
7 Code, to read:

8 11503.5. ~~The commissioner of any county may regulate~~  
9 ~~pesticide applications around sensitive sites. For purposes of this~~  
10 ~~section, “sensitive site” includes, but is not limited to, schools,~~  
11 ~~hospitals, convalescent homes, day care centers, and residences.~~  
12 *The county agricultural commissioner may condition the*  
13 *agricultural use of any pesticide for agricultural production within*  
14 *one-quarter mile of a school with respect to timing, notification,*  
15 *and method of application.*

16 SEC. 3. Section 12999.5 of the Food and Agricultural Code  
17 is amended to read:

18 12999.5. (a) In lieu of civil prosecution by the director, the  
19 commissioner may levy a civil penalty against a person violating  
20 Division 6 (commencing with Section 11401), Article 10  
21 (commencing with Section 12971) or Article 10.5 (commencing  
22 with Section 12980) of this chapter, Section 12995, Article 1  
23 (commencing with Section 14001) of Chapter 3, Chapter 7.5  
24 (commencing with Section 15300), or a regulation adopted  
25 pursuant to any of these provisions, of not more than ~~five one~~  
26 ~~thousand dollars (\$5,000)~~ *(\$1,000)* for each violation. *Any*  
27 *violation determined by the commissioner to be a serious violation*  
28 *as defined in Section 6130 of the Code of Regulations is subject to*  
29 *a fine of not more than five thousand dollars (\$5,000) for each*  
30 *violation.* It is unlawful and grounds for denial of a permit under  
31 Section 14008 for any person to refuse or neglect to pay a civil  
32 penalty levied pursuant to this section once the order is final.

33 (b) *If a person has received a civil penalty for pesticide drift in*  
34 *a school area subject to Section 11503.5 that results in a serious*  
35 *violation as defined in subdivision (a), the commissioner shall*  
36 *charge a fee, not to exceed fifty dollars (\$50), for processing and*  
37 *monitoring each subsequent pesticide application that may pose*  
38 *a risk of pesticide drift made in a school area subject to Section*  
39 *11503.5. The Agricultural Commissioner shall continue to impose*  
40 *the fee for each subsequent application that may pose a risk of*

1 *drift, until the person has completed 24 months without another*  
2 *serious violation as defined in subdivision (a).*

3 (c) Before a civil penalty is levied, the person charged with the  
4 violation shall be given a written notice of the proposed action  
5 including the nature of the violation and the amount of the  
6 proposed penalty, and shall have the right to request a hearing  
7 within 20 days after receiving notice of the proposed action. A  
8 notice of the proposed action that is sent by certified mail to the last  
9 known address of the person charged shall be considered received  
10 even if delivery is refused or the notice is not accepted at that  
11 address. If a hearing is requested, notice of the time and place of  
12 the hearing shall be given at least 10 days before the date set for  
13 the hearing. At the hearing, the person shall be given an  
14 opportunity to review the commissioner's evidence and to present  
15 evidence on his or her own behalf. If a hearing is not timely  
16 requested, the commissioner may take the action proposed without  
17 a hearing.

18 ~~(e)~~

19 (d) If the person upon whom the commissioner levied a civil  
20 penalty requested and appeared at a hearing, the person may appeal  
21 the commissioner's decision to the director within 30 days of the  
22 date of receiving a copy of the commissioner's decision. The  
23 following procedures apply to the appeal:

24 (1) The appeal shall be in writing and signed by the appellant  
25 or his or her authorized agent, state the grounds for the appeal, and  
26 include a copy of the commissioner's decision. The appellant shall  
27 file a copy of the appeal with the commissioner at the same time  
28 it is filed with the director.

29 (2) The appellant and the commissioner may, at the time of  
30 filing the appeal or within 10 days thereafter or at a later time  
31 prescribed by the director, present the record of the hearing  
32 including written evidence that was submitted at the hearing and  
33 a written argument to the director stating grounds for affirming,  
34 modifying, or reversing the commissioner's decision.

35 (3) The director may grant oral arguments upon application  
36 made at the time written arguments are filed.

37 (4) If an application to present an oral argument is granted,  
38 written notice of the time and place for the oral argument shall be  
39 given at least 10 days before the date set therefor. The times may

1 be altered by mutual agreement of the appellant, the  
2 commissioner, and the director.

3 (5) The director shall decide the appeal on the record of the  
4 hearing, including the written evidence and the written argument  
5 described in paragraph (2), that he or she has received. If the  
6 director finds substantial evidence in the record to support the  
7 commissioner's decision, the director shall affirm the decision.

8 (6) The director shall render a written decision within 45 days  
9 of the date of appeal or within 15 days of the date of oral arguments  
10 or as soon thereafter as practical.

11 (7) On an appeal pursuant to this section, the director may  
12 affirm the commissioner's decision, modify the commissioner's  
13 decision by reducing or increasing the amount of the penalty levied  
14 so that it is within the director's guidelines for imposing civil  
15 penalties, or reverse the commissioner's decision. Any civil  
16 penalty increased by the director shall not be higher than that  
17 proposed in the commissioner's notice of proposed action given  
18 pursuant to subdivision (b). A copy of the director's decision shall  
19 be delivered or mailed to the appellant and the commissioner.

20 (8) Any person who does not request a hearing pursuant to  
21 subdivision (b) may not file an appeal pursuant to this subdivision.

22 (9) Review of a decision of the director may be sought by the  
23 appellant within 30 days of the date of the decision pursuant to  
24 Section 1094.5 of the Code of Civil Procedure.

25 ~~(d)~~

26 (e) The commissioner may levy a civil penalty pursuant to  
27 subdivisions (a) to (c), inclusive, against a person violating  
28 paragraph (1), (2), or (8) of subdivision (a) of Section 1695 of the  
29 Labor Code, which pertains to registration with the commissioner,  
30 carrying proof of that registration, and filing changes of address  
31 with the commissioner.

32 ~~(e)~~

33 (f) After the exhaustion of the appeal and review procedures  
34 provided in this section, the commissioner or his or her  
35 representative, may file a certified copy of a final decision of the  
36 commissioner that directs the payment of a civil penalty and, if  
37 applicable, a copy of any decision of the director or his or her  
38 authorized representative rendered on an appeal from the  
39 commissioner's decision and a copy of any order that denies a  
40 petition for a writ of administrative mandamus, with the clerk of



1 the superior court of any county. Judgment shall be entered  
2 immediately by the clerk in conformity with the decision or order.  
3 No fees shall be charged by the clerk of the superior court for the  
4 performance of any official service required in connection with the  
5 entry of judgment pursuant to this section.

6 ~~SEC. 4. Section 54985 of the Government Code is amended~~  
7 ~~to read:~~

8 ~~54985. (a) Notwithstanding any other provision of law that~~  
9 ~~prescribes an amount or otherwise limits the amount of a fee or~~  
10 ~~charge that may be levied by a county, a county service area, or a~~  
11 ~~county waterworks district governed by a county board of~~  
12 ~~supervisors, a county board of supervisors shall have the authority~~  
13 ~~to increase or decrease the fee or charge, that is otherwise~~  
14 ~~authorized to be levied by another provision of law, in the amount~~  
15 ~~reasonably necessary to recover the cost of providing any product~~  
16 ~~or service or the cost of enforcing any regulation for which the fee~~  
17 ~~or charge is levied. The fee or charge may reflect the average cost~~  
18 ~~of providing any product or service or enforcing any regulation.~~  
19 ~~Indirect costs that may be reflected in the cost of providing any~~  
20 ~~product or service or the cost of enforcing any regulation shall be~~  
21 ~~limited to those items that are included in the federal Office of~~  
22 ~~Management and Budget Circular A-87 on January 1, 1984.~~

23 ~~(b) If any person disputes whether a fee or charge levied~~  
24 ~~pursuant to subdivision (a) is reasonable, the board of supervisors~~  
25 ~~may request the county auditor to conduct a study and to determine~~  
26 ~~whether the fee or charge is reasonable.~~

27 ~~Nothing in this subdivision shall be construed to mean that the~~  
28 ~~county shall not continue to be subject to fee review procedures~~  
29 ~~required by Article XIII B of the California Constitution.~~

30 ~~(c) This chapter shall not apply to any of the following:~~

31 ~~(1) Any fee charged or collected by a court clerk pursuant to~~  
32 ~~Section 26820.4, 26823, 26824, 26826, 26827, 26827.4, 26830,~~  
33 ~~72054, 72055, 72056, 72059, 72060, or 72061 of the Government~~  
34 ~~Code or Section 103470 of the Health and Safety Code, and any~~  
35 ~~other fee or charge that may be assessed, charged, collected, or~~  
36 ~~levied pursuant to law for filing judicial documents or for other~~  
37 ~~judicial functions.~~

38 ~~(2) Any fees charged or collected pursuant to Chapter 2~~  
39 ~~(commencing with Section 6100) of Division 7 of Title 1.~~

40 ~~(3) Any standby or availability assessment or charge.~~



1 ~~(4) Any fee charged or collected pursuant to Article 2.1~~  
2 ~~(commencing with Section 12240) of Chapter 2 of Division 5 of~~  
3 ~~the Business and Professions Code.~~

4 ~~(5) Any fee charged or collected by a county recorder or local~~  
5 ~~registrar for filing, recording, or indexing any document,~~  
6 ~~performing any service, issuing any certificate, or providing a~~  
7 ~~copy of any document pursuant to Section 2103 of the Code of~~  
8 ~~Civil Procedure, Section 27361, 27361.1, 27361.2, 27361.3,~~  
9 ~~27361.4, 27361.8, 27364, 27365, or 27366 of the Government~~  
10 ~~Code, Section 103625 of the Health and Safety Code, or Section~~  
11 ~~9525 of the Commercial Code.~~

12 ~~(6) Any fee charged or collected pursuant to Article 7~~  
13 ~~(commencing with Section 26720) of Chapter 2 of Part 3 of~~  
14 ~~Division 2 of Title 3 of the Government Code.~~

15 ~~SEC. 5.—~~

16 *SEC. 4.* Notwithstanding Section 17610 of the Government  
17 Code, if the Commission on State Mandates determines that this  
18 act contains costs mandated by the state, reimbursement to local  
19 agencies and school districts for those costs shall be made pursuant  
20 to Part 7 (commencing with Section 17500) of Division 4 of Title  
21 2 of the Government Code. If the statewide cost of the claim for  
22 reimbursement does not exceed one million dollars (\$1,000,000),  
23 reimbursement shall be made from the State Mandates Claims  
24 Fund.